

**ON** the 11th day of January, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl dated November 16, 1993, came on before the Appeals Board for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by her attorney, Thomas E. Hammond, of Wichita, Kansas. Respondent and insurance carrier appeared by their attorney, Vaughn Burkholder, of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Eric R. Yost, of Wichita, Kansas. There were no other appearances.

**RECORD**

The record before the Appeals Board is the same as that considered by the Administrative Law Judge. In addition, the parties stipulated that the Appeals Board could consider the letter of May 5, 1993, that claimant's attorney sent to respondent, along with an enclosed claim form.

**ISSUES**

The Administrative Law Judge found for preliminary hearing purposes that claimant's alleged hip injuries were compensable and that claimant was entitled to medical treatment from Dr. J. Stanley Jones. The respondent and insurance carrier appeal the Judge's Order and contend that claimant failed to make timely written claim. That is the issue now before the Appeals Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

(1) Claimant failed to make timely written claim for his alleged injury to his hips. Therefore, any work related injury to the hips is not compensable.

The facts are uncontroverted. Claimant's last day of work for the respondent was October 5, 1992. Claimant left work due to shoulder complaints allegedly related to his work duties. Claimant did not tell anyone about his hip complaints until June of 1993 when he told the physician who was treating his shoulders. On June 30, 1993, claimant reported to Boeing Central Medical that he was having hip problems. This was the first time Boeing had notice of any hip problem. Prior to June 30, 1993, respondent did not provide compensation to claimant for this injury.

On May 5, 1993, claimant's attorney wrote respondent by certified mail advising that his office represented claimant in connection with injuries claimant received while in the course of employment with Boeing. Enclosed with this letter was a claim for workers compensation benefits signed by claimant. The claim form is the standard form, K-WC15, provided by the Director's office. This letter was received by respondent on May 6, 1993, approximately 223 days after claimant's last day of work.

On June 15, 1993, claimant filed an application for hearing, Form E-1, alleging injuries to "both hands, arms, shoulders, neck and all parts effected thereby." On October 6, 1993, claimant filed an amended application for hearing adding "hips" to the injuries claimed.

K.S.A. 44-520a provides that no proceeding for compensation under the Workers Compensation Act shall be maintained unless a written claim for compensation is served upon the employer within 200 days of the date of accident or the date of the last payment of compensation.

Claimant failed to serve written claim within 200 days of his last day of work pertaining to an accidental injury to the hips or other body parts remotely related to the hips or lower extremities. Therefore, claimant's claim for hip injury is not timely and non-compensable.

Claimant contends that the period to make timely claim is extended to one year under K.S.A. 44-557 as the employer failed to report claimant's accident to the Director. However, the claim period is not extended in this instance as claimant failed to give Boeing notice of accident as required by K.S.A. 44-520. K.S.A. 44-557(c) provides that the time to make written claim of accident is extended to one year when a report of accident is not filed with the Director **and** the employee has given notice of accident required by K.S.A. 44-520.

As the facts presented to date fail to establish notice of accident or injury to the hips, there is no justification to extend the period of timely written claim to one year.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that for preliminary hearing purposes the Order of Administrative Law Judge Shannon S. Krysl dated November 16, 1993 is reversed; that the alleged hip injury is not compensable due to the lack of timely written claim; and that this proceeding be, and hereby is remanded to the Administrative Law Judge for additional proceedings as the parties may require.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Thomas E. Hammond, P.O. Box 47370, Wichita, Kansas 67201-7370  
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Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director